IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

WP(C).No. 27628 of 2006(L)

PETITIONER:

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1. MANAGER,
   ST. STEPHEN'S COLLEGE, UZHAVOOR-686 634.

2. PRINCIPAL,
   ST. STEPHEN'S COLLEGE, UZHAVOOR-686 634.

BY ADV. SRI.BABY ISSAC ILLICKAL

RESPONDENTS:

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1. STATE OF KERALA,
   REPESENTED BY ITS CHIEF SECRETARY TO GOVERNMENT,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. MAHATMA GANDHI UNIVERSITY,
   REPRESENTED BY ITS REGISTRAR, KOTTAYAM-686 560.

R1 BY GOVT. PLEADER SRI. T.T. MUHAMMED.
R2 BY SC SRI. V.A. MUHAMMED.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC. 27628/2006.

APPENDIX

PETITIONER'S EXTS:

EXT. P1 : PHOTO COPYOF THE PRO FORMA OF THE DIRECT PAYMENT AGREEMENT.

EXT. P2 : PHOTOCOPY OF THE APPOINTMENT ORDER OF THE 2ND PETITIONER DATED 31.1.2006.

EXT. P3 : PHOTO COPY OF THE REQUEST DATED 1.2.2006 BY THE 1ST PETITIONER.

EXT. P4 : PHOTO COPY OF THE ORDER DATED 3.2.2006 OF THE 2ND RESPONDENT.

EXT. P5 : PHOTO COPY OF THE LETTER DATED 2.8.2006 OF THE 2ND RESPONDENT.

EXT. P6 : PHOT COPY OF THE LETTER DATED 9.10.2006 BY THE 2ND RESPONDENT.

EXT. P7 : PHOTOCOPY OF THE LETTER DATED 21.8.2006 BY THE 2ND RESPONDENT.

EXT. P8 : PHOTO COPY OF THE LETTER DATED 14.3.2006 BY THE 2ND RESPONDENT.

EXT. P9 : PHOTO COPY OF THE LETTER DATED 25.4.2006 BY THRE 1ST PETITIONER.

K.M.JOSEPH, J.

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WP.(C) No.27628 OF 2006

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Dated this the 23rd day of January, 2007

JUDGMENT

Case of the petitioner is as follows:

Petitioner is the Manager of a first grade educational agency. The educational agency has been appointing qualified and suitable teachers as the Head of the institution. Post of Principal fell vacant. First petitioner duly appointed second petitioner with effect from 1.2.2006. It is rejected by the University. This action is stated to be arbitrary. Apparently the rejection is based on sub section (3) of Section 59 of the Mahatma Gandhi University Act, which prescribes that the appointment of Principal by promotion will be on the basis of seniority-cum-fitness. This is challenged by the petitioner as violative of Article 30 of the Constitution.

2. Counsel for the petitioner and Standing Counsel submits that in view of the decision of the Supreme Court reported in **Malankara Syrian Catholic College v. Jose** (2007(1) K.L.T. 22) the matter may have to be reconsidered as the Apex Court held that the provisions providing for appointment on the basis of seniority-cum-fitness is

inapplicable to minority institutions.

Accordingly the writ petition is allowed and Ext.P5 is quashed and the matter will be reconsidered in accordance with law and a decision taken in the matter in accordance with law within a period of one month from the date of receipt of a copy of this judgment.

(K.M. JOSEPH, JUDGE)

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K.M.JOSEPH, JJ.

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W.A. No. OF

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JUDGMENT

Dated this the day of February, 2006.